

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

JUANA HERNANDEZ, AS )  
ADMINISTRATRIX OF THE )  
ESTATE OF DANNY NICACIO )  
and ARMANDO MAISONET, )  
 )  
Plaintiffs, )  
 )  
v. ) CIVIL ACTION NO. 05-40141-FDS  
 )  
SCOTTSDALE INSURANCE )  
COMPANY and UTICA )  
MUTUAL INSURANCE )  
COMPANY, )  
 )  
Defendants. )

**DEFENDANTS' MOTION FOR LEAVE TO SUPPLEMENT THEIR REPLY IN  
SUPPORT OF THEIR JOINT MOTION TO DISMISS PURSUANT TO FED. R. CIV. P.  
12 (b)(6), OR TO STAY ACTION IF NOT DISMISSED IN ITS ENTIRETY**

The Defendants, Scottsdale Insurance Company (“Scottsdale”) and Utica Mutual Insurance Company (“Utica”), hereby request leave to supplement their Reply in Support of Their Joint Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(6), or to Stay Action If Not Dismissed In Its Entirety (“Reply”). A supplement is warranted because there has been a recent development in the Underlying Actions pending in the Worcester Superior Court which this Court should be made aware of. In support of their supplement, the Defendants state as follows:

In Section VI of the Defendants' Reply, the Defendants address the fact that Scottsdale and Utica's insured, Saielo, Inc. has filed a motion to dismiss in the Underlying Actions. Upon motion by the defendants in that case, the Worcester Superior Court has ordered that the

Underlying Actions be stayed until the motion to dismiss in the Underlying Actions is decided.

A copy of the Worcester Superior Court's order in the Hernandez action is attached hereto<sup>1</sup>.

WHEREFORE, Defendants hereby respectfully request that the Court consider this supplement to their Reply.

Respectfully submitted,

**Scottsdale Insurance Company,**  
By Its Attorneys,

/s/ Caryn L. Daum  
John W. Steinmetz (BBO #568108)  
Caryn L. Daum (BBO #647001)  
Robinson & Cole LLP  
One Boston Place  
Boston, MA 02108  
(617) 557-5900

**Utica Mutual Insurance Company,**  
By Its Attorney,

/s/ James T. Scamby  
James T. Scamby (BBO #629144)  
Tucker, Heifetz & Saltzman, LLP  
Three School Street  
Boston, MA 02108  
(617) 557-9696

Dated: January 6, 2006

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<sup>1</sup> The Worcester Superior Court has also stayed the Maisonet action; however, the court did not issue a separate order for that case, so the Defendants are unable to attach a copy to this supplement.

**CERTIFICATE OF SERVICE**

I, Caryn L. Daum, hereby certify that a true and accurate copy of the foregoing document was served by first-class mail, postage prepaid, on this 6<sup>th</sup> day of January, 2006, upon:

Héctor E. Piñeiro, Esq.  
Law Office of Héctor E. Piñeiro  
807 Main Street  
Worcester, MA 01610

/s/ Caryn L. Daum

Caryn L. Daum

Civil Docket WOCV2002-01747

RE: Hernandez Administratrix et al v Kahr Inc et al

TO: John W Steinmetz, Esquire  
Robinson & Cole LLP  
One Boston Place  
Boston, MA 02108

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**CLERK'S NOTICE**

This is to notify you that in the above referenced case the Court's action on **12/07/2005**:

*RE: Emergency Motion to Stay all Proceedings and Request for Hearing*

is as follows:

**MOTION (P#72)** The motion to stay after hearing and after notice all parties, is ALL'D, except that the inspection of the premises in question may be conducted as scheduled. If the motion to dismiss which is in progress and has not yet been filed under 9a is ALL'D, that will be dispositive of this case. If the Motion to Dismiss is DENIED, then the time standards shall be amended to include and reflect the full period of the stay ordered by this Court and any voluntary stay period previously agreed to by all sides. (John S. McCann, Justice (RAJ)).  
Notices mailed 12/8/2005

Dated at Worcester, Massachusetts this 8th day of December, 2005.

Francis A. Ford,  
Clerk of the Courts

BY:

Joanne C. Herring  
Assistant Clerk

Telephone: 508-770-1899, Ext. 126 or Ext. 105 (Session Clerk)

Copies mailed 12/08/2005